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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,679	07/24/2003	Peter Rutkowski	03938-P0001A	1044
24126	7590	05/12/2005		EXAMINER
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			TSIDULKO, MARK	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,679	RUTKOWSKI, PETER 	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

- A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4,6,7,9,12,13,15,17,18,20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,6,7,9,12,13,15,17,18,20 and 22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

The submission of amendment filed on 4/14/2005 is acknowledged. At this point claims 1, 6, 12 and 17 have been amended, claims 3, 5, 8, 10, 11, 14, 16, 19, 21 and 23-28 have been canceled and the remaining claims left unchanged. Thus, claims 1, 2, 4, 6, 7, 9, 12, 13, 15, 17, 18, 20 and 22 are at issue in the instant application.

### *Claim Objections*

Claim 6 is objected to because of the following informalities:

Referring to Claim 6 it is unclear what Applicant intends by “*light source connected to the connection end of the housing*”. What is the “**connection end** of the housing”? The light source is connected to the power source, as shown on Fig. 1, but not to the connection end of the housing.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 9, 12, 15, 17, 20, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graubner (US 2,823,300) in view of Zadro (US 2004/0047052).

Graubner discloses (Figs.1, 2) a flashlight including a light emission section having a light source [B], a medium (lens) [17], and a diffusion element [20] (col.1, lines 15-34) removably attached to the light emission section. The diffuser is suitable for use as a flashlight for spotlight (col.1, lines 29-34). It would have been an obvious matter of design choice to provide the different decorative shapes of the diffuser for purpose of aesthetic appearance.

Graubner discloses the instant claimed invention except for a translucent suction cap. As shown in Fig.2 attachment is provided by the lens ring [18] threaded to the flashlight and having an annular flange [19] overhanging flange [22] of the diffusion element [20]. Using a suction cup for attachment the diffusion element to the flashlight will allow simplify and accelerate assembling and disassembling.

Zadro (Figs.4, 5) discloses a suction cup [34] adapted (as well known in the art) for securing attachment to the flat surface. The suction cup made of translucent thermoplastic material (vinyl) (page 4, [0040]). Since Zadro discloses (Fig.5) that the bracket [12] is removably attached to the suction cup [54], it is clearly understood that any detail may be attached to the suction cup identically.

It would have been an obvious matter of design choice to provide the different color of the diffuser for purpose of aesthetic appearance.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the suction cup, as shown by Zadro, for the attachment of diffusion element of Graubner to the lens of the flashlight in order to simplify and accelerate assembling and disassembling.

Claims 2, 7, 13, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graubner and Robinson as applied to claim 1 above, and further in view of Raynor (US 3,080,553).

Graubner et al. discloses the instant claimed invention except for diffusion element imparting at least one color to the radiation.

Raynor discloses a flashlight having a colored diffusion element (col.2, line 34).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the colored diffuser, as taught by Raynor, for the device of Graubner et al. for the purpose of aesthetic appearance.

#### ***Response to Arguments***

In response to applicant's argument that structure disclosed in US 2004/0047052 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the suction cup itself, as well known in the art and technology, is a means of attachment only, and as any other type of attachment, such as bolt, nut, screw, Velcro, etc., may be used at any type of the structure or device.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.

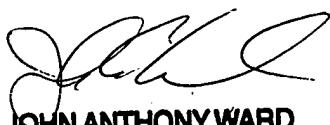
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.  
May 2, 2005



**JOHN ANTHONY WARD  
PRIMARY EXAMINER**